

RULES  
AND  
ORDERS

FOR THE COURT

Of the Upper

351

BENCH

At WESTMINSTER,

Made and published by the

JUDGES of the said Court, in

the Terme of St. Michael,

In the year 1654

LONDON,

Printed for Abel Koper, at the Sign of the St.  
Dunston Church in Fleet-street.

ARTICLE

AND

ORDER

OF THE COURT

OF THE DISTRICT

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RULES & ORDERS  
FOR THE  
UPPER BENCH,

In the Terme of St. Mi-  
chael, In the year of our  
LORD. 1654.

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1. **F**Or the reducing of At-  
tornies, and Officers, to  
their due attendance.

2. For the reformation of  
abuses of Sberiffs, and Bai-  
liffs.

B

3. For

## Rules and Orders

3. For discoverie, and punishment of abuses in general.

4. For the constant preservation of ORDER in the Court.

5. For setting a constant course of practice, pleadings, and proceedings, especially where there hath been variety of opinion, or practice.

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### Concerning Officers and Attornies.



That all Officers and Attornies of this Court be admitted of some Iunes of Court, or Chancery, by the beginning of Hillarie Terme next, or in the same Terme

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Terme wherein they are admitted Officers or Attornies; and be in Commons one week in every Terme, and take chambers there, or in case that cannot be conveniently, yet to take chambers or dwellings in some convenient places, and leave notice with the Butler, where their chambers or habitations are; under paine of being put out of the Roll of Attornies.

2. That all Officers and Attornies of this Court appear in person in this Court, upon; or before the fourteenth day of *Michaelmas* Terme, and upon, or before the seventh day of every other Terme, upon paine of ten shillings for the first default, twenty shillings for the second default, and putting out of the Roll upon the third default, the appearance to be entered with the Prothonotary. And the defaulters to be delivered to the Court upon oath, if required within three daies after the time appointed for appearance.

3. That every Sheriffe have his Deputy in this Court, to returne and receive

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ceive Writs. And that each Deputy yearly before *Hillary* Terme have his name and the place of his residence in *London* or *Westminster*, set and continued up in Tables, in the Office of the Prothonotary.

4. That the Clarks of Affize, their Deputies or Assistants, do personally appear with their *Postes* on the first day of *Easter* and *Michaelmas* Terme; And the Deputy Sheriffs, and all other Officers of the Court do personally appear by the Essoyn day of every second Return of every Terme; and continue there during the residue of the Terme, without some just cause to the contrary allowed by the Court.

5. That for the future Common Solicitors be not admitted to practice in this Court, unlesse they are admitted Attornies of either Bench; Provided that it extend not to the managing of Evidence at a Trial, nor to private Solicitors or servants of Corporations, or other persons in the causes of their Masters.

6. That

## for the Upper Bench

THAT persons in office of business  
6. That none be admitted an Attornie  
of this Court for the time to come,  
unlesse he hath practized as a Common  
Solicitor in this Court by the space of  
five yeares now last past, or hath ser-  
ved, or shall have served by the space  
of five yeares as a Clerk to some Judge,  
Serjeant at Law, practising Councellor,  
Attornie, Clerk, or Officer of one of the  
Courts at *Westm.* unlesse his Master die, or  
give over his practice; And be also up-  
on examination, found of good ability,  
and honesty, for such employment; And  
that sufficient proof (to be put in-  
to writing) be made of such service to  
the Prothonotary upon a desire of ad-  
mittance, and then filed without Fee.

7. That no person practise in ano-  
thers name, nor that any Attorny know-  
ingly permit another to practise in his  
name, upon paine of being put out of the  
Roll.

8. That Attornies dismissed by one  
Court from their practise for misde-  
meanours, be not after Certificate ad-

C

mitted

## **Rules and Orders**

mitted to practise in another Court, it being contrary to the intent of the Law.

9. That no Under-Sheriffe, or Bayliffe of Sheriffes, or Liberties, be admitted during such their employment, to practise as Attornies under paine of expulsion from the employment of an Attorny, and not to be readmitted.

10. That such Attornies as have not beene attending their employment in this Court, by the space of one yeare last past, unlesse hindered by sicknesse, be not allowed their priviledge of Attornies.

11. That for the prevention of maintenance and Broccage, no Attornie be Lessee in an Ejectment, nor Bayle for a Defendant in this Court in any action.

## **Concerning**

**Concerning Sheriffs and Bayliffes.**

**T**Hat for the prevention & remedy of delays and abuses in Sheriffs, Under-Sheriffs, Bayliffs of Liberties and their Deputies, and other Bayliffs of Sheriffs, &c. In execution of Process and Writs. That if it shall appeare that any such Officer shall wilfully delay the Execution, or Return of any Process or Execution, or shall take, or require any undue Fees for the same, or shall give notice to the Defendant, thereby to frustrate the Execution of any Process, or Writ, or having levied money, shall detain it in their hands, after the times of the Returnes of their Writs, besides the ordinary course of Amerciaments; The contempt or misdemeanour appearing, an Attachment, Information, Commitment, or Fine to be as the Case requireth; and this as well in case of a late Sheriff, or person before

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mentioned as of them at present in Office.

That to reform the abuses by blank Warrants granted by Sheriffs, whereby persons are arrested and driven to extorted compositions for their liberty, without Process of Law, that no Warrants be granted out to any Officer to Arrest or Attach any person before a Writ first come to the Sheriff.

And whereas Sheriffs have taken immoderate and excessive Fees for execution of Writs of possession, and restitution of possession contrary to Law: It is declared that such immoderate Fees ought not to be taken, and in case such shall be taken, This Court to proceed to punish the same according to Law.

Concerning

## for the Upper Bench.

### Concerning the reformation, and punishment of abuses in general.

**O**Rdered that a Jury of able and credible Officers, Clerks, and Attornies, once in three yeares, be impannelled, and sworn to enquire.

1. Of the points usually inquirable by *Writ* ( *viz.* ) Falsities Contempts, Misprisions, and Offences.

2. Of such who have beene admitted Attornies or Clerks, and are notoriously unfit, their names to be presented to the Court, and they to be punished, or removed as the case shall require.

3. Of new or exacted Fees, and of those that have taken them under whatsoever pretence; And to prepare and present a Table of the due and just Fees, that the

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same may be fixed and continue in every Office, and likewise for the Marshalsey,

And that some persons be enjoined and sworn to give Evidence (*viz.*) some Clerks of the Court, and some Attornies in every County, not excluding others.

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*Concerning the better preservation of Order among the Officers and Clerks, and observation of Breach of Orders and misdemeanors.*

**T**Hat the Court do once every year in *Michaelmas-Term*, nominate 12 or more able & credible practisers in the Court, to continue for the year coming, for the purposes hereafter limited.

1. That they or any of them examine such persons as shall desire to be admitted

## *for the Upper Bench.*

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ted Attornies, and appoint convenient times, and places for the same. And in order thereunto, That such persons as shall desire to be admitted Attornies, first, attend the Prothonotary with his proof of service, then to repaire to the persons appointed to examine Attornies; and being approved, to be presented to the Court with the Assignment of his Approbation, and then to be sworne in open Court, unlesse some just exception be against him.

2. That they give information to the Court from time to time of Breaches of Orders, and miscarriages of Officers, Attornies, and Clerks.

That a settled course of practice and proceedings be settled, especially in those Causes where there hath been uncertainty, and that the inconveniencies in Process, Proceedings and Pleadings, may be regulated unto a due course, in order whereunto these several things are ordered and directed according to the method of Proceedings.

*Con-*

Concerning original Suits,  
and Process, and where  
laid.

**T**Hat Actions upon the case, trespassse for goods, assault, or imprisonment, arising in any English County, be laid in their proper Counties, unlesse they arise where the Justices of *Ni. Pri.* seldome come, and because Trespassse and Trover for goods, battery, imprisonment and slander, must need's be notorious in what County they arise. The Attorney knowingly laying them out of their proper County, unlesse in the cases before expressed, or for such other causes as shall be allowed by the Judges of the Court, and duly made appear to be true, to be severely punished.

That although the Declaration be delivered seven dayes before the last day of the next precedent Terme, or  
after,

after, yet before Plea upon Oath made the *Vifue* may be changed upon motion in the said Transitory Actions the next Terme after, and the Defendant to plead to the new Action, as he should have done in the other without delay.

That the *Vifue* may be changed upon Oath, as before, though the Defendant come in by exigent.

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Concerning Process and serving thereof.

THat according to the provision of the Statute 31. *Eliz.* all Attornies that Sue out Process of Exigent, be careful that Writs of Proclamation be delivered, and the Sberiffs do take care duly to execute the same.

That according to the Statute of 23. *Hen. 6.* A Prisoner taken upon a *Capias* in Prozesse, be not discharged till he hath given Bond to appear, unlesse the Plaintiff, or his Attorney shall consent to take an appearance without Bayle, and in such

D                      case

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case the Warrant of Attorne to appear to be subscribed or accepted by the Defendants Attorny, And such Warrant not to be revoked; And an Attachment to be granted against the Bayliff offending herein, or against the Attorny refusing to appear, or procure an appearance, having subscribed or accepted.

### Concerning Ha. Corp. to Sheriffs, and Goalers.

**T**hat a *Habeas Corp. cum causa ad faciend. et recipiend.* directed to any Sheriff other then London or Middlesex, not to be returnable immediate or in the Vacation-time, but at a day certain in Court, in the Terme, unless it be to deliver over to prison in discharge of his Bayle.

That such *Habeas Corp.* to the Sheriffs of London or Middlesex, may be granted in Terme or Vacation-time returnable immediate.

That in case of a *Habeas Corp.* returnable, immediate the Sheriff ought to make

make his returne the same day that the Writ is delivered, and to bring the body immediately as is required by the Writ, without permitting him to wander abroad by colour or pretence thereof.

That where a Writ of *Habeas Corp.* is directed to a Sheriff, Warden of the Fleet, or Goaler, the prisoner is to be brought in custody according to the Writ at the day limited without being permitted to wander abroad in the mean time under pretence of such Writ.

That a *Habeas Corp. ad respondend.* may be granted to the Warden of the Fleet, or the Keeper of an Inferiour Prison of a Liberty, or Parichise returnable at a day certain in Court, and to be a good cause of Deteyner, as well as where a *Capias ad respondend.* comes to a Sheriff.

That a *Habeas Corp. ad satisfaciend* may be granted to the Warden of the Fleet, or to such inferiour Goaler returnable in Court at a day certaine, and the number-Roll of the Judgment to be indorsed upon the Writ by the Attornie who

sues it out, and such Writs to be a cause of Deteyner.

That if upon a *Habeas Corp. cum causa*, the Prisoner be returned charged with Process out of the *Common-Bench*, or *Exchequer*, though returnable at a day to come, the Prisoner may be committed with those causes.

If upon a *Habeas Corp.* or *Capi. Corp.* the party be returned in Custody, and Bayleable, and special Bayle requirable, the Bayle not to be taken absolutely without consent of the Plaintiff, or his Attorney, and if taken *De bene esse*, the Prisoner not to be discharged till the Bayle be assented unto, or the Plaintiff over-ruled in Court to accept the same upon examination.

**Concern-**

Concerning Habeas Corp. to  
Inferiour Courts, and  
Procedendo.

**T**hat Writs of *Habeas Corp.* directed to the inferiour Courts of *London, Westminster, Southwark*, and other Courts within five miles of *London*, may be returnable immediate; and if the Defendant intendeth to be bailed, then upon, or within foure dayes after allowance of the Writ, notice is to be given in writing of the names and addition of the Bayle, the time when, and the Judge before whom the same is intended to be put in, to the Plaintiff, or his Attorney, or him that caused the plaint to be entered; Or if none can be found, then notice of the premisses to be left in writing with the chief Clerk of the inferiour Court, or his Deputy, by the parry that tenders the Bayle, or his Attorney, and Oath made thereof, otherwise

otherwise the Bayle not to be taken, and a *Procedendo* granted, if desired before Bayle accepted.

That if no Bayle in such cases be put in within eight dayes after the *Habeas Corp.* allowed in those Courts when it is returnable, immediate a *Procedendo* may be granted by any Judge of the Court, if desired before Bayle taken.

That if a Bayle be taken in the absence of the Plaintiff, or his Attorney, the time is to be taken *De bene esse*, and if no Exceptions be taken within twenty dayes after notice given to the Plaintiff, or his Attorney, of the names of the Bayle, and before whom taken; Then upon Oath made of such notice, the Bayle to be delivered out to be filed.

That if Bayle upon a *Habeas Corp.* be taken before a Judge at his Chamber, and not excepted against, if not filed within four dayes after the twenty dayes, a *Procedendo* may be granted upon certificate that it is not filed.

That

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That in Terme-time the Plaintiff in the Inferiour Court may spee the Defendant to put in, or to file his Bayle by rules given, and if not filed according to Rules, upon Certificate thereof a *Procedendo* to be granted.

*That in slender no special Bayle except in slender of Title, when to be taken out of the Rules.*

## Concerning special Bayle.

*That in Privilege (other then for Pleas or disbursements in Court as to libe or writs) to be removed, be by Habeas Corp. Priviledge, or Certiorari, special Bayle ought to be given.*

That upon a Cause removed, by *Habeas Corp.* out of the Courts of *Canterbury, Southampton, Hull, Leichfield, or Paele*, which are Counties where the Judges of *Na Pri.* feldome come there, if the Action be transitory, it be laid in the County of *Kent, Southampton, York, Stafford, or Dorset* where the Town and County lieth.

That in Covenant because the Damages

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ges uncertaine till declaration Bayle at discretion.

That in Battery, Conspiracy, false Imprisonment, no special Bayle of Course without special motion and Order.

That in Slander no special Bayle, except in Slander of Title, wherein to be left to discretion of the Judges

That in Priviledge (other then for Fees or disbursements in Court as an Attorney of this Court) Bayle at discretion of the Court, in such case wherein a Suit by a Common person, special Bayle not requisite.

*Concerning*

*Concerning Apparances,  
and entring thereof.*

**T**Hat an Attorney of either Bench accepting a Warrant, or subscribing a Procefs, Declaration, or Warrant to appear, be compelled to cause an Appearance, or liable to an Attachment, or put out of the Roll, as the cause requires; and the Party not to be received to Countermand such Appearance after his Reteyster.

That no person without Rule of Court, Order of Judge, or Prothonotary, and notice to the adverse Party or his Attorney, change or shift his Attorney; And such Attorney newly coming in, to take notice at his peril, of the Rules whereunto the former Attorney was liable, had he continued.

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That

That a Reteyder of an Attorney of the Common Pleas, by an Attorney of the Upper Bench, and *E converse*, be a sufficient excuse to the Attorney so reteyned, acting according to such Reteyder; and the Attorney so reteyning, without Warrant from the Party, to be liable to the punishment.

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### Rules to Declare and Plead.

**I**F the Defendant be committed to the Prison of the *Marshalsey*, by the Process of this Court, the Prisoner giving Rules to declare, and notice thereof to the Plaintiff or his Attorney, and Oath thereof made, The Plaintiff not Declaring before the end of the second Term after Commitment inclusively, Then the Defendant in reference thereunto,

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unto, to be discharged of the Imprisonment in the end of the second Term upon Common Baile.

And if any Defendant be committed to any other Prison, upon any Process of this Court, giving Rules and notice as before, and Oath thereof made; If the Plaintiff do not remove the Prisoner, and Declare before the end of the second Term after the Commitment inclusively; Then the Defendant in reference thereunto likewise to be discharged of the Imprisonment in the end of the second Term, upon Common Baile.

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## *Concerning Declarations.*

For avoiding of long and unnecessary repetitions of the Original Writ in Actions upon the Case, and Personal Actions upon Penal Statutes.

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That

That Declarations in Actions of Trespasse upon the Case, or Personal Actions upon any general Statute, namely, *Hue and Cry*, *Monopolies*, or for a Suit in the Admiralty, and such like, other then Debt, repeat not the Original Writ, but only the nature of the Action, viz. *A. B. &c. Attached to answer C. D. in Plea of Trespasse upon the Case, or in a Plea of Trespasse and Contempt against the Form of the Statute.*

For the avoiding of the Common Barr, and new Assignement.

The Declaration upon an Original *Quare Clausum fregit.* may mention the place certainly, and so to prevent the use and necessity of the Common Barre and new Assignement.

**That unnecessary Length of  
Declarations be Reform-  
ed, and in order thereunto,**

**T**HAT in Actions of Covenant, not to repeat more of the Deed then is necessary for the Assignment of the Breach, and not to repeat the Covenant in the conclusion.

In Actions of Slander long preambles forborne, and no more enducement then what is necessary for the maintenance of the Action, but when it requires a special enducement or colloquium.

That in Actions upon generall Statutes, the Declaration not to repeat the Statute, but to conclude against the form  
of

of the Statute, in such case made and provided, as in case of debt upon the Statute of 2. *Ed.* 6. for Tythes, and 32, *Hen.* 8. for maintenance, 21. *Jac.* of monopolie.

That in Actions of debt upon a judgment had in the Courts at Westminster, to recite onely the judgment, but if a judgment had by or against an executor or administrator, then the action of debt upon that judgment, to repeat the declaration and judgment.

That the Plaintiff may mend his Declaration paying costs, or giving an Imperlance at the Plaintiffs election, by the order of Court, or a Judge after it is entered, if the amendment be but a small matter, that it doth not deface the Roll.

That in Actions upon general Issues the Defendant may move for a *Con-*

*Concerning the entring of  
Rolls, and by Whom.*

**T**Hat no Rolls be delivered to be  
Entred but to the Prothonota-  
ries Clerks.

That no Rolls be carried into the  
Country, under pain that the Offender  
be excluded from entring any more  
Rolls afterwards as a Clerk.

*Concerning Imparlances up-  
on suits by Original.*

**F**Orasmuch as some inconveniencies  
doe sometimes happen to the Plain-  
tiffs by entring their Declarations in  
spe-

special Actions: It is therefore ordered, that the Plaintiffs in such special Actions, shall have liberty to enter Imperlances the Term following, entring the same of the first Term with an Incipitur, as it hath been usual; and that all other Imperlances be duly entred before any issues, demurrers or judgments thereupon be entred.

That if a Defendant appear the first Term, and give no Rules to declare, the Defendants Attorney may the second Term be compelled to accept a Declaration with an Imperlance, and the Declaration may be entred as of that Term with an Imperlance over to the next Term, or in the first Term with an Incipitur as before, as the case shall require.

That if the Plaintiff declare not the second Term, though the Defendant give no Rules, yet a non suit may be entred at the end of the second Term, upon a continuance over by him, by *dies datus*, but not the third Term or after.

Upon a meer real action an Imperlance to be of Course. That

for the Upper Bench.

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That in Ejecment, or any personal Action, if the appa<sup>r</sup>ance be the first return of *Hilary* or *Trinity* Term, no Impar<sup>l</sup>ance without consent or special rule,

In causes other then *London* or *Middlesex* if the appa<sup>r</sup>ance be before *Cras-  
tinum Martini*, or *Mensem pasche*, no Impar<sup>l</sup>ance without consent or special rule; but if upon, or after those returns an Impar<sup>l</sup>ance of Course.

In *London* or *Middlesex*, if the appa<sup>r</sup>ance be before *Cras-  
tinum Ascensionis*, or before the last return of any other Term, no Impar<sup>l</sup>ance without consent or special rule, but the Defendant to plead as of that Term, within fourteen daies after the end of the Term, upon rule given to answer; but if of *Cras-  
tinum Ascensionis*, or the last return, then an Impar<sup>l</sup>ance of Course.

If a Writ be returnable *Quinq<sup>ue</sup> Pas-  
che*, or the last return of any Term, the Defendant giving rules, and calling for

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a Declaration, if it be not delivered four days before the Essoine day of the ensuing Term, or more, a Nonsuit to be entred.

### *Concerning Pleading.*

**T**He Common Bar and new-assignment to be forborn, where the certainty is contained in the Declaration, equivalent to a new assignment.

That Pleading be succinct, without unnecessary repetitions.

That in the pleading of an outlawry, the mean process be not repeated, but the Exigent and outlawry joyned to the commencing of the suit.

That in pleading a general Statute, the Statute be not recited as the Statute of 21 *Iacobi* of Limitations.

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Concerning Demurrers.

**T**Hat according to the Statute of 27 *Eli7.* upon Demurrers, the Causes be specially assigned, and not involved with general unapplied expressions of double negative pregnant, uncertain, wanting form, and the like; but to shew specially wherein, that the other party may, as the Cause shall require, either joyn in Demurrer, or amend paying Costs, or discontinue his Action.

That it be Declared that matters of Form, as well on the part of him that Demurrers, as of him that joynes in all parts of the Pleading, are discharged, unless such as are specially assigned upon the Demurrer.

*Concerning Trials, and Notice of Trials and Enquiries.*

**I**F the Plaintiff give notice of a Trial, and he proceed not, the Plaintiff not to take it down to Trial again without new notice to be given, unless by consent or rule of Court.

That in case of such Warning, and no proceeding, the Defendant, upon motion to have his Costs of his former Attendance to be taxed by the Prothonotary, unless he give the Defendant warning in convenient time, that he would not proceed, or shew cause to be allowed in the Court in excuse of such Costs.

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*Concerning Trials at Bar.*

**T**Hat for the remedy of excessive Charges of the Tryals at the Barr, especially whilst the Jury lieth out, That it is ordered that a Jury lying out one night after a privy Verdict delivered, there be allowed for the whole Diet of each Jurymen that night, no more then 3 s. 4 d. a piece, and for two Tipstaves and one Crier or Usher, to each of them no more then 2 s. Ordinary, besides the charges of the Jurros Lodging.

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Concerning Special Verdicts  
at the Bar, and by *Ni pri.*

**I**N finding of special Verdicts where the Points are single, and not complicated, and no special conclusion, the Council, if required, doe subscribe the Points in question, and agree to amend the Commissions, or mistakes in the mean Conveyances, according to the truth, to bring the Points in question to Judgement.

That unnecessary finding of Deeds in *hac verba*, where the question rests not upon them, but are only derivation of Title to be spared and found shortly, according to the substance they bear in reference to the Deed, as Feoffment, Lease, Grant, &c.

the judgment; if for the Defendant  
the judgment is given to the Plaintiff

the judgment is given to the Plaintiff  
the judgment is given to the Plaintiff

## Concerning New Trials.

the judgment is given to the Plaintiff

**T**hat where a Verdict finds entire  
Damages, where Damages are the  
principal, and part not actionable, though  
Judgement be arrested, yet by Rule of  
Court, a *Ventre facias de novo* may is-  
sue, as upon an ill Verdict; And upon  
the new Triall, the party may sever his  
Damages.

the judgment is given to the Plaintiff

## Concerning Judgements.

**T**hat upon a Cause removed by an  
*habeas Corpus* into the Superior  
Court, having Jurisdiction of the Cause,  
if Judgment be for the Plaintiff, the cause  
shall be considered and cast into the  
Judge.

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Judgement; if for the Defendant, the charges of putting in Baile.

That in a Judgement by *non sum informatus*, or *nihil dicit* in an *ejectione firme*, the Capiatur be entred upon the first Judgement.

And lastly, it is declared, That as the Court doth expect that all the Rules and Orders before mentioned, shall be duly observed, And are resolved severely to punish such as shall break or neglect any of them. So it is further declared, That all other former Orders and Rules yet in force, not hereby altered, suspended, or adnulled; shall be likewise observed and put in execution according to the true intent and meaning of the same.

By the Court.

Henry Rolle

Richard Aske

Richard Newdigate.

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*The Oath to be taken by every Attorney of the Upper Bench before their Admittance.*

**Y**OU shall do no falsehood, <sup>or</sup> deceit, nor consent to any to be done within the Court of the Upper Bench. And if you shall know of any to be done, you shall give notice thereof to the Lord Chief Justice, and other his brethren, Justices of  
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that Court, that it may be reformed. You shall delay no man for lucre or malice : You shall encrease no Fees, but you shall be contented with the old Fees accustomed : You shall Plead no Forrein Pleas, nor sue any Forrein Suits unlawfully to hurt any man, but such as shall stand with the order of the Law and your Conscience ; You shall Seal all such Proceſs as you shall sue out of this Court, with the Seal of the ſaid Court, and ſee the Officer

*for the Upper Bench.*

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Officer satisfied for the same; You shall not wittingly nor willingly sue, or procure to be sued, any false Suits, nor give aide nor consent to the same, upon pain to be expelled the said Court for ever. And further, You shall use and demean your self in the Office of an Attorney within this Court, according to your Learning and discretion.

*So help you God.*

FINIS.